

COMMONWEALTH OF KENTUCKY  
MINE SAFETY REVIEW COMMISSION  
ADMINISTRATIVE ACTION NO. **06-MSRC-006**

COMMONWEALTH OF KENTUCKY,  
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

**FINAL ORDER**

**RICK DARRELL FOUTS**

RESPONDENT

\* \* \* \* \*

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondent Rick Darrell Fouts, and the members of the Commission having reviewed the Settlement Agreement filed on August 31, 2006 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The formal hearing and pre-hearing conference are **CANCELLED**;
3. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**.

A copy is attached hereto;

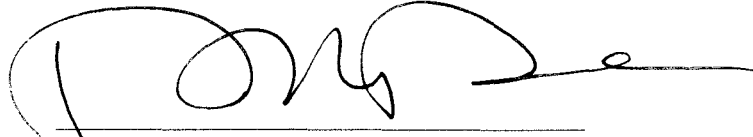


4. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.
5. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);
6. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
7. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy



of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 14<sup>TH</sup> day of September 2006.

A handwritten signature in black ink, appearing to read 'DM Davidson', written over a horizontal line.

Denise Moore Davidson, Chair  
MINE SAFETY REVIEW COMMISSION



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 15<sup>TH</sup> day of September 2006:


HON. DANIEL F. DOTSON  
178 MAIN STREET, SUITE 1  
WHITESBURG, KY 41858  
(606) 633 - 4467  
Counsel for RICK DARRELL FOUTS

And by messenger mail to:

HON. JAMES D. BRANNEN  
OFFICE OF LEGAL SERVICES  
NATURAL RESOURCES LEGAL DIVISION  
#2 HUDSON HOLLOW  
FRANKFORT KY 40601  
502/ 564- 2356  
FAX 502/ 564 - 9212  
Counsel for OMSL

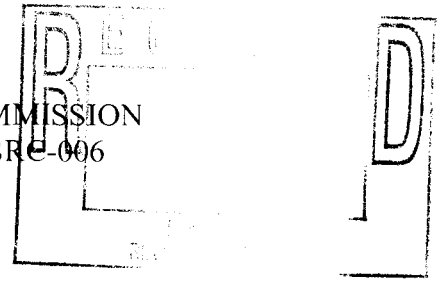
And the original shall be kept on file:

Mine Safety Review Commission  
132 Brighton Park Blvd.  
Frankfort Ky 40601

  
Bryon Alan Thompson  
Hearing Officer & General Counsel  
Mine Safety Review Commission



KENTUCKY MINE SAFETY REVIEW COMMISSION  
ADMINISTRATIVE ACTION NO. 06-MSRC-006



COMMONWEALTH OF KENTUCKY,  
OFFICE OF MINE SAFETY & LICENSING

COMPLAINANT

VS.

**SETTLEMENT AGREEMENT BETWEEN OMSL  
AND RICK DARRELL FOUTS**

RICK DARRELL FOUTS

RESPONDENT

\* \* \* \* \*

Comes the Complainant, the Kentucky Office of Mine Safety and Licensing (“OMSL”), and Respondent Rick Darrell Fouts (“Fouts”), and hereby state that they have agreed to a Settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration of the final resolution of this action against him, and the cancellation of the hearing as it pertains to him that is currently scheduled for August 10, 2006, Fouts hereby admits that the method of mining followed in the subject mine exposed a miner to unusual danger from roof falls caused by faulty pillar recovery methods in violation of KRS 352.201(1) on August 2, 2004, as alleged in OMSL’s Complaint. Therefore, Fouts hereby agrees to the following:

1. Fouts agrees to one (1) year suspension of his underground mine foreman’s certificate (A-154-93). Further, Fouts agrees to a probation of his underground miner’s certificate, his EMT certificate (20994), his gas detection certificate (HD-282-95), and his shot firer certification (MN-00509) for a period of one (1) year, all of the above sanctions effective on the date of approval and entry of this Settlement Agreement by the Mine Safety Review Commission.

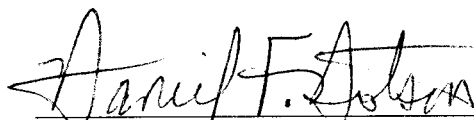


2. During this period of suspension and probation, Fouts shall comply with all state and federal mine safety laws and regulations. The willful violation by Fouts of any of said laws and regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his underground mine foreman's certificates for the remainder of the sanction period.

3. Within forty-five (45) days of the effective date of this Settlement, Fouts must take eight (8) hours of special safety training from OMSL at its Hazard district office.

4. Fouts further agrees that this Settlement and any Final Order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1(13).

5. OMSL and Fouts acknowledge and agree that there are no further promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.



DANIEL F. DOTSON  
Attorney at Law  
78 Main Street, Suite 1  
Whitesburg, Kentucky 41858  
Attorney for Respondent Fouts

8-15-06  
DATE




JOHNNY GREENE  
Acting Executive Director  
KY Office of Mine Safety & Licensing  
P.O. Box 2244  
Frankfort, Kentucky 40602

8-30-06  
DATE



**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Settlement Agreement between OMSL and Rick Darrell Fouts was mailed this 31<sup>st</sup> day of August, 2006, to: Daniel F. Dotson, Attorney at Law, 178 Main Street, Suite 1, Whitesburg, Kentucky 41858.

  
\_\_\_\_\_  
JAMES D. BRANNEN  
OFFICE OF LEGAL SERVICES  
NATURAL RESOURCES LEGAL DIVISION  
KY OFFICE OF MINE SAFETY & LICENSING